



ABC'S OF CHILD WELFARE LAW

Jennifer Morgan
Parent Defense Program Manager
Office of State Public Defender



ICPC INTERSTATE COMPACT FOR PLACEMENT OF CHILDREN

- Purpose is to permit receiving state to investigate proposed placement and approve placement
- Sending state retains jurisdiction and legal and financial responsibilities for the child
- Receiving state provides pre-placement home study, on going supervision and post-placement services



ICPC

- Time frames that I have never seen CPS meet (in any state)
Examples – “The sending state ICPC office must forward the completed request packet to the receiving state ICPC office within two (2) business days of receiving it.”
Expedited placement

Home study must be conducted and report provided to the sending state within 60 calendar days from receipt of referral packet

ICPC

- 43-18-1 – Article III – “No sending agency shall send, bring or cause to be sent or brought into any other party state any child *FOR PLACEMENT IN FOSTER CARE OR AS A PRELIMINARY TO A POSSIBLE ADOPTION* unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein”
- Model Regulation III – states ICPC applies to parent placements except in limited situations.
- States split on whether the Model Regulations are binding and expand the scope of the statutes
- Due process problems depriving a parent of child simply because of state lines



ICPC


STATUTE > POLICY

JUDGE CAN ORDER PLACEMENT



ICWA INDIAN CHILD WELFARE ACT

- Applies to children who are members of, or eligible for membership, in a federally recognized American Indian tribe or Native Alaskan Village, or the biological child of a member of an Indian tribe
- Tribe must be notified by CPS/Court – ongoing duty to inquire on tribal affiliation
- Tribal Court has concurrent and presumptive jurisdiction over Indian child custody cases and transfer to Tribal Court can occur at any point in the proceedings

- 
- Under ICWA, whenever a state trial court determines that a parent is indigent, the court **MUST** appoint counsel for any “removal, placement or termination hearing.”
 - **REQUIRES “ACTIVE EFFORTS”**
 - Higher standard of proof – Clear and Convincing rather than preponderance of the evidence
 - The party removing the child must have a “qualified expert witness” to provide the Court with knowledge of the social and cultural aspect of Indian life to diminish the risk of any cultural bias.”



ICWA

- ICWA lists order of placement preferences
 1. Member of extended family
 2. Foster home licensed/approved BY THE TRIBE or another member of the Tribe
 3. Non-Indian licensed foster home
- TPR – burden of proof is beyond a reasonable doubt

ICWA

- U.S. Supreme Court – case challenging ICWA constitutionality\
- Brackeen v. Haaland, U.S. Supreme Court No. 21-376
US Court of Appeals for the 5th Circuit – No. 18-11479
- Questions Presented:
 1. Whether various provisions of ICWA-namely, the minimum standards of Section 1912(a), (d), (e), and (f); the placement-preference provisions of Section 1915 (a) and (b); and the recordkeeping provisions of Sections 1915(e) and 1951(a)-violate the anticommandeering doctrine of the Tenth Amendment.
 2. Whether the individual plaintiffs have Article III standing to challenge ICWA's placement preferences for "other Indian families," 25 U.S.C. 1915(a)(3), and for "Indian foster home[s]," 25 U.S.C. 1915(b)(iii).
 3. Whether Section 1915(a)(3) and (b)(iii) are rationally related to legitimate governmental interests and therefore consistent with equal protection.



CAPTA CHILD ABUSE PREVENTION AND TREATMENT ACT

- CAPTA funds children's protective services functions
- Certified GAL must be appointed (can be lay person) – Role of GAL defined to “obtain first-hand, a clear understanding of the situation and needs of the child” and “to make recommendations to the court concerning the best interest of the child”
- Also provides funding for improving legal preparation and representation – IF the state has it in their IV-B plan



TITLE IV-B & TITLE IV-E OF SOCIAL SECURITY ACT

- FEDERAL FUNDING MATCH!!! (with conditions, of course)
- Requires “Reasonable Efforts”
- Requires that each child entering foster care **MUST** have a written case plan that articulates the permanency planning goal for that child.



ASFA ADOPTION AND SAFE FAMILIES ACT

- Maintained requirement for “reasonable efforts”
- Created the basic requirements to bypass reasonable efforts – “aggravated circumstances”
- Permitted the use of Concurrent Planning
- Requires periodic review of the case by a court or administrative agency at least EVERY 6 MONTHS
- Requires Permanency Hearing at least EVERY 12 MONTHS
- If a child is in foster care for 15 of the last 22 months, ASFA requires that CPS pursue TPR
- Gives CPS bonus funding for each adoption finalized in excess of its baseline



ADA AMERICANS WITH DISABILITIES ACT

- Guarantees that all litigants have reasonable access to services
- Must make “reasonable accommodations”
- Includes physical access to services, Interpreters, transportation assistance
- INCLUDES OPIOID USE DISORDER, so long as they are in recovery, parents are entitled to “reasonable accommodations” relating to recovery.
- Example – CPS CANNOT require a parent to stop using methadone, naltrexone or buprenorphine (Subutex and Suboxone)
- DOJ Memo – “Discriminating against a person because that person takes medication to treat a disability constitutes discrimination on the basis of disability.” Feb. 2, 2022 Memo, Civil Rights Division, #204-64-170

QUESTIONS

- Jennifer Morgan
- jmorgan@ospd.ms.gov
- 601-576-4209

